

REMARKS

§112 Rejection

Support for the viscosity range of “50,000 cps to 1,280,000 cps at 0.5 rpm of spindle speed” at a “dosage of about 4% by weight of the hydrophobic liquid” is found at Table 3 (page 23 of the specification) and Example 1 (gel 1).

As stated in Example 3 (p. 22) Gel#1 (Table 1) was added to the given weight of hydrophobic liquid, as specified in Table 3 (page 23).

Gel#1 (Example 1, page 2) contains 180 grams of sodium bentonite clay and has a total weight of 831 grams. Gel#1 therefore contains $\frac{180}{831} \times 100 = 21.66\%$ clay. The 31.26 grams of Gel#1 added to tests 1-7 of Table 3, therefore, contain $31.26 \times 0.2166 = 6.77$ grams of modified clay added to the specified 1678.74 grams of hydrophobic liquids of tests 1-7.
$$\frac{6.77 \text{ grams modified clay}}{168.74 \text{ grams hydrophobic liquid}} = 4.0\%$$
 modified clay by weight of hydrophobic liquid.

Applicant has amended the viscosity from “at least 50,000” to 50,000 to 1,280,000 cps to repeat the disclosed viscosity range at 0.5 rpm in tests 1-7 of Table 3 at page 23 of the specification.

It is submitted, therefore, that the rejection under 35 U.S.C. §112, first paragraph, should be withdrawn.

The data showing unexpected results, presented in the second Declaration of Ashoke Sengupta dated August 1, 2007, were dismissed as being "not effective for overcoming the 102 portion of the 102-3 rejection set forth". Further, additional data were requested, which were presented at the interview, and were included in the Third Declaration of Ashoke Sengupta, together with data for hectorite (claimed herein) and a synthetic, fluorine-modified (substituted) hectorite (Laponite B* or sodium magnesium fluorosilicate) – not claimed herein.

*See attached Exhibit A

Before exploring the unexpected results shown in the data presented in the Declarations of Ashoke Sengupta, it is submitted that the Lukenbach et al. publication ('949) does not provide a reasonable basis for an anticipation rejection under 35 U.S.C. §102.

The Lukebach et al. '949 publication is directed to a cleansing composition that contains a polymeric emulsifier, such as PEG-30 dipolyhydroxystearate (page 10, lines 2-6) and dimethicone copolyol (claim 24), among others, and may contain a benefit agent, such as a reflectant. The reflectants disclosed are mica, alumina, calcium silicate, glycol dioleate, glycol distearate, silica, sodium magnesium fluorosilicate, and mixtures thereof (page 13, lines 18-20).

Applicants' claims are directed to two combinations of components (Groups I and II), both combinations leading to unexpectedly high viscosities:

I. Claims 1-5, 14-18 and 34-37 are directed to a combination of PEG-30 dipolyhydroxystearate and a smectite clay selected from the group consisting of bentonite, montmorillonite, saponite, hectorite, beidellite, stevensite, and mixtures thereof.

II. Claims 38-53 are directed to a combination of BIS-PEG 15 dimethicone/IPDI copolymer (a polydimethylsiloxane-polyethylene 15 polymer copolymerized with 3-isocyanatomethyl-3,5,5-trimethylcyclohexylisocyanate (page 15, lines 5-9 of applicants' specification)) and one or more of the same smectite clays of the Group I claims.

Claim Group I (1-5, 14-18 and 34-37)

The office action asserts that the calcium silicate of the Lukenbach '949 publication is a wollastonite clay (not claimed herein by applicants); and that the sodium magnesium fluorosilicate of Lukenbach et al. '949 is a modified version of talc (not herein claimed by applicants) or bentonite clay. Sodium magnesium fluorosilicate, in fact, is not a bentonite clay or a modified version of bentonite clay - it is a modified (synthetically altered version of) hectorite (see Exhibit B - definitions of hectorite).

At the personal interview of November 6, 2007, Examiner Cheung referring to the final office action dated February 1, 2007 (repeated in the last office action dated October 4, 2007) indicated that the primary reference (Lukenbach et al. – page 13, lines 18-20

discloses “**mica, alumina, calcium silicate (a wollastonite clay), sodium magnesium fluorosilicate (a modified version of talc or bentonite clay), and mixtures thereof.**”

Applicants claim **bentonite (not a modified form of talc), montmorillonite, saponite, hectorite (not a modified hectorite containg fluorine), beidellite, stevensite, and mixtures thereof.**

Applicants have provided data, as requested by the Examiner, comparing each of the reflectants of the Lukenbach et al. with applicants' claimed smectite clays and the data is truly surprising. The Third Declaration of Ashoke K. SenGupta is attached as Exhibit D and clearly shows that the sodium magnesium fluorosilicate of the prior art does not provide the claimed thickening that applicants' claimed clays have been demonstrated to provide in the presence of the claimed polymers.

Comparing sample 3 (calcium silicate) to sample 4 (calcium silicate + PEG-30 dipolyhydroxystearate, the copolymer causes the composition to substantially decrease in viscosity; similar results are seen for talc (sample 5 vs. sample 6); the same for fumed silica (sample 7 vs. sample 8); the same for fumed alumina (sample 9 vs. sample 10) the same for mica (sample 11 vs. sample 12). The only Lukenbach et al. reflectant that the PEG-30 dipolyhydroxystearate even slightly caused to increase the viscosity of a hydrophobic liquid was the sodium magnesium fluorosilicate (see sample 13 vs. sample 14 – viscosity was raised from 80 cps to 160 cps (at the claimed 0.5 rpm spindle speed). This slight increase in viscosity is attributed to the viscosity-gain due to the dissolved polymer (PEG-30 dipolyhydroxystearate) in the polymer solution, based on the viscosity results for Sample No. 17 and 18. Regardless, applicants, however, claim a Brookfield viscosity of at least 50,000 cps at 0.5 rpm spindle speed, and at a much lower clay solids of about 4% based on the weight of a hydrophobic liquid.

While applicants herein claim hectorite, they do not claim synthetically modified versions of hectorite that include fluorine, e.g., Laponite B, wollastonite clay, or modified version of talc. As shown in the data of the enclosed Third Declaration of Ashoke Sengupta, synthetically modified hectorite, containing fluorine, does not produce viscosities anywhere close to the viscosities obtained using the claimed hectorite (sample 14 vs. sample 16: 160 cps vs. 280,000 cps).

Accordingly, it is submitted that Lukenbach et al. '949 does not disclose the smectite clays claimed by applicants herein and, therefore, there is no 102 portion of the rejection alleged to be a 102-3 rejection. As such, the unexpected results contained in the Declarations of Ashoke Sengupta must be considered and should rebut any rejection under 35 U.S.C. §103. It is submitted that applicants' data, showing unexpected increases in viscosity when combining the claimed smectite clays with the claimed PEG-30 dipolyhydroxystearate is evidence of a new (viscosity increasing) property in hydrophobic liquids that is not disclosed in the prior art and is clear evidence of non-obviousness (see MPEP 716.02 III).

Claim Group II (38-53)

For the first time in almost 10 office actions, applicants claims 38-53 stand rejected (under 35 U.S.C. §103(a)) on prior art. The obviousness theory set forth in the office action is that it would have been obvious to use applicants claimed BIS-PEG 15 dimethicone/IPDI copolymer (a polydimethylsiloxane-polyoxyethylene 15 polymer copolymerized with 3-isocyanatomethyl-3,5,5-trimethylcyclohexyl isocyanate) in view of the teaching in Lukenbach et al. '949 to use a "dimethicone copolyols". Typical dimethicone copolyols are disclosed in U.S. 6,294,154 and 5,437,809 (attached as Exhibit C) and neither disclose nor suggest the 3-isocyanatomethyl-3,5,5-trimethylcyclohexyl isocyanate portion of applicants' claimed copolymer. It is a big stretch to assert obviousness using a reference that neither discloses nor suggests half of the claimed copolymer. It is submitted, therefore, that the rejection of claims 38-53 should be withdrawn.

It is submitted that all claims are now of proper form and scope for allowance. Early and favorable consideration is respectfully requested.

Dated: October 1, 2008

Respectfully submitted,

By: /Richard H. Anderson/
Richard H. Anderson, Reg. No. 26,526
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive, Suite 6300
Sears Tower
Chicago, Illinois 60606-6357
(312) 474-6300
Attorney for Applicants